

Article 2: Administrative Code

Division 41: Securities Disclosure
(Added 10-11-2004 by O-19320 N.S.)

§ 22.4101 Disclosure Practices Working Group Purpose and Intent

- (a) The City Manager, the City Attorney, the City Auditor and Comptroller, and the City Treasurer are hereby directed to establish a Disclosure Practices Working Group, consisting solely of City officers, managers, and staff, with the assistance and advice of the City's disclosure counsel, which shall have the responsibilities set forth in this Division, in furtherance of the mandates of section 32.1 of the City Charter, to ensure the compliance of the City (and the City Council, City officers, and staff in the exercise of their official duties) with federal and state securities laws and to promote the highest standards of accuracy in disclosures relating to securities issued by the City. It is the intent of the City Council that the Disclosure Practices Working Group be an internal working group of City staff and not a decision-making or advisory body subject to the California Brown Act.
- (b) The responsibilities of the Disclosure Practices Working Group shall be:
- (1) to design and implement the City's disclosure controls and procedures;
 - (2) to review the City's disclosures in connection with its securities;
 - (3) to ensure the City's compliance with federal and state securities laws;
 - (4) to ensure that City staff receive appropriate training regarding such controls and procedures;
 - (5) to evaluate the disclosure controls, procedures, and compliance therewith on an annual basis;
 - (6) to make such recommendations as it shall see fit regarding such disclosure controls and procedures and related matters to the City Manager, the City Council, and the Financial Reporting Oversight Board; and,
 - (7) to ensure that the City Council, City officers, and staff comply with the federal securities laws in the exercise of their official duties in connection with securities issued by the *related entities*.

(Added 10-11-2004 by O-19320 N.S.)

§ 22.4102 Definitions

Each word or phrase that is defined in this Division appears in the text of this Division in italicized letters. For purposes of this Division, the following definition(s) shall apply:

Related entities mean those independent agencies, joint power authorities, special districts, component units, or other entities created by ordinance of the City Council or by State law that issue securities, for which the City Council serves as the governing or legislative body, or for which at least one City officer serves as a member of the governing or legislative body in his or her official capacity, or for which the City has agreed to provide disclosure. *Related entities* include but are not limited to the Public Facilities Financing Authority of the City of San Diego, the San Diego Facilities and Equipment Leasing Corporation, the City of San Diego/MTDB Authority, the Convention Center Expansion Financing Authority, the Redevelopment Agency of the City of San Diego, the San Diego Open Space Park Facilities District No.1, the reassessment districts, and community facilities districts created by the City.
(Added 10-11-2004 by O-19320 N.S.)

§ 22.4103 Organization of the Disclosure Practices Working Group

The Disclosure Practices Working Group shall consist of the following:

- (a) the City Attorney, who shall serve as chair of the Disclosure Practices Working Group;
- (b) the Deputy City Attorneys designated pursuant to sections 22.0302, 22.0303, and 22.0304 of the San Diego Municipal Code;
- (c) the City Auditor and Comptroller (and such other managers of the Office of City Auditor and Comptroller as the City Auditor and Comptroller deems necessary for the effective operation of the Disclosure Practices Working Group);
- (d) the City Treasurer (and such other managers of Financing Services as the City Treasurer deems necessary for the effective operation of the Disclosure Practices Working Group);

- (e) the Deputy City Manager responsible for the financial management functions of the City (and such other senior members of the City Manager's Office as the City Manager deems necessary for the effective operation of the Disclosure Practices Working Group); and,
- (f) the City's outside disclosure counsel.
(Added 10-11-2004 by O-19320 N.S.)

§ 22.4104 Meetings

The Disclosure Practices Working Group shall meet as often as necessary to fulfill its obligations under this section, but not less than once a month. Members of the Disclosure Practices Working Group may participate in meetings by telephone.
(Added 10-11-2004 by O-19320 N.S.)

§ 22.4105 Design and Implementation of Disclosure Controls and Procedures

- (a) The Disclosure Practices Working Group shall conduct a thorough review of the City's current disclosure practices and shall recommend to the City Manager by December 30, 2004, such new disclosure controls and procedures as shall be necessary to ensure the accuracy of the City's disclosures and the City's compliance with all applicable federal and state securities laws. Such disclosure controls and procedures shall be in writing and designed to ensure:
 - (1) that information material to the City's proposed and outstanding securities is accumulated and communicated to senior City officials, including the City Manager, City Auditor and Comptroller, City Treasurer, City Attorney, and the City Council, as appropriate, to allow timely decisions regarding disclosure;
 - (2) that such information is recorded, processed, and summarized in a timely manner to enable the requisite senior City officials to certify the accuracy of disclosures made in connection with City financings;
 - (3) compliance with all applicable federal and state securities laws, including the disclosure of all material information with respect to the City's proposed and outstanding securities; and,
 - (4) the preservation of an audit trail regarding information reviewed or prepared in connection with such disclosures.

- (b) Such disclosure controls and procedures shall address the accuracy of information disclosed by the City in connection with securities issued by the *related entities*, and shall include those procedures established by the Financial Reporting and Oversight Board for employees and officials to submit complaints or concerns to the Financial Reporting Oversight Board confidentially and anonymously.
- (c) The City Manager shall implement the recommendations of the Disclosure Practices Working Group relating to disclosure controls and procedures together with any recommendations of the Financial Reporting Oversight Board relating to disclosure controls and procedures as soon as practicable, or shall within 45 days of receiving such recommendations provide the City Council with a report as to why such recommendations should not be implemented.

(Added 10-11-2004 by O-19320 N.S.)

§ 22.4106 Annual Evaluation and Report

- (a) Each year, beginning in 2005, the Disclosure Practices Working Group shall, in collaboration with the City Manager and the City Auditor and Comptroller, conduct an annual evaluation of the City's disclosure procedures and controls. In the course of that review, the Disclosure Practices Working Group shall:
 - (1) meet with key managers and staff in the City Manager's Office (particularly those managers and key staff responsible for the financial management of the City), the City Treasurer's Office, and other relevant offices and departments to discuss the elements of the City's disclosure materials for which they are responsible and to evaluate the effectiveness of the disclosure procedures;
 - (2) meet with the City's independent auditors and disclosure counsel to review the design and operation of the disclosure controls and procedures; and

- (3) submit a written Annual Report on the Committee's work and findings to the City Council and to the Financial Reporting Oversight Board on or before [November 1] of each year, beginning [November 1, 2005].
- (b) The City Manager and the City Auditor and Comptroller shall:
 - (1) review the Annual Report required by subsection (a)(3);
 - (2) certify in writing within 14 calendar days of the issuance of the Annual Report to the City Council that they have reviewed the report; and,
 - (3) provide to the City Council any recommendations or dissenting opinions that they may have with regard to the content of the Annual Report.

(Added 10-11-2004 by O-19320 N.S.)

§ 22.4107 Timely Preparation and Review of Disclosure Documents

- (a) The Disclosure Practices Working Group shall be responsible for the following:
 - (1) reviewing the form and content of all of the City's documents and materials prepared, issued, or distributed in connection with the City's disclosure obligations relating to its securities, including without limitation, preliminary and final official statements and any supplements thereto, Comprehensive Annual Financial Reports, Annual Reports, and other filings made with Nationally Recognized Municipal Securities Information Repositories, press releases, rating agency presentations, web-site postings, and other communications reasonably likely to reach investors or the securities markets; and,
 - (2) providing for the timely review of all disclosure materials requiring approval and certification by the City Manager, City Attorney, and City Auditor and Comptroller.

- (b) The Disclosure Practices Working Group also shall be responsible for reviewing disclosures provided by the City in connection with securities issued by the *related entities*, together with all of such documents and materials prepared, issued, or distributed in connection with such securities, to the extent that the City, the City Council, or City officers, or staff are responsible for the form or content of such documents or materials. As appropriate, the Disclosure Practices Working Group shall provide for the timely review of all such disclosure materials requiring approval and certification by the City Manager, City Attorney, and City Auditor and Comptroller.

(Added 10-11-2004 by O-19320 N.S.)

§ 22.4108 Promote Compliance with Securities Laws

The Disclosure Practices Working Group shall promote the City's compliance with the federal and state securities laws relating to disclosure in connection with the City's securities and may make recommendations to the City Manager and the City Council regarding appropriate means for furthering such compliance by the City or the *related entities*.

(Added 10-11-2004 by O-19320 N.S.)

§ 22.4109 Training for City Employees

- (a) The Disclosure Practices Working Group shall be responsible for arranging for mandatory training, on a regular basis, for City staff, officials, City Councilmembers, and the Mayor regarding their obligations relating to disclosure matters under federal and state securities laws.
- (b) The City Manager, the City Auditor and Comptroller, and the City Attorney shall ensure the attendance at such training of those persons for whom the Disclosure Practices Working Group recommends such training.

Such training shall include information on how to submit complaints or concerns to the Financial Reporting Oversight Board in a confidential and anonymous manner.

(Added 10-11-2004 by O-19320 N.S.)

§ 22.4110 Requests of the Disclosure Practices Working Group

Officers and employees of the City and its component units and members of the Board of Administration, officers, and employees of the San Diego City Employees' Retirement System shall promptly provide such information, assurances, and/or certifications as the Disclosure Practices Working Group may, at its sole discretion, request in order to assure compliance with federal and state securities laws.
(Added 10-11-2004 by O-19320 N.S.)

§ 22.4111 Certifications by City Officials to the City Council

- (a) In connection with the approval of offering documents for securities by the City Council, the City Manager and the City Attorney each shall certify in writing to the City Council that to the best of his or her knowledge, such documents do not make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. In the event that the City Manager or the City Attorney is medically incapacitated or physically absent from the jurisdiction, a deputy or other authorized designee of such officer may make the certification required by this section.
- (b) Upon the issuance of the City's Comprehensive Annual Financial Report [CAFR] and in connection with the incorporation of all or portions of the CAFR in the disclosure documents of the City or the *related entities*, the City Auditor and Comptroller shall make the certifications to the City Council required by Chapter 2, Article 2, Division 7 of the San Diego Municipal Code.
(Added 10-11-2004 by O-19320 N.S.)

§ 22.4112 Selection of Independent Auditors

In preparation for the issuance of a Request for Proposals for an independent auditor for the City, the City Manager shall consult with the Disclosure Practices Working Group regarding its recommendations relating to appropriate expertise, experience, responsibility, and other factors on which candidates will be evaluated by the Financial Reporting Oversight Board.
(Added 10-11-2004 by O-19320 N.S.)